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EXAMINER	
PAGE, EVAN RANDALL	
ART UNIT	PAPER NUMBER
3715	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/763,906	HORVATH, DWAYNE A.	
	Examiner	Art Unit	
	EVAN R. PAGE	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 May 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *33-60* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *33-60* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/26/2009 has been entered.

2. The following is a Non-Final Office action in response to communications received on 05/26/2009. Claim 33 has been amended and claims 33-60 are pending, and are addressed below.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 33-35, 40-51, and 57-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,206,697 to Harter (**Harter**) in view of US Patent 4,558,609 to Kim (**Kim**).

In Reference to Claims 33 and 48:

Harter teaches:

A simulated sharp edged device that may be used as a training weapon or toy, which comprises:

a)a handle, said handle being at least a portion of a housing defining a longitudinal plane, said handle further including a tang receiving interdependent shaped cutout (**Figs. 1 and 2**); and

b) a simulated weapon blade element having a complementary interdependent shaped tang affixed within and extending from said shaped cutout operably restrained to be longitudinally slidable and about the said point to permit said simulated weapon blade element movement from a first position to a second position (**Fig. 9**); and

c) an electrical circuit mounted within said handle for providing an indication upon activation including a movement sensor actuator disposed to cooperate with said interdependent shaped tang to complete said circuit, such that said complementary interdependent shape effects the use of a single sensor to turn on at least one indicating device in said second position and turning off said at least one indicating device in said first position (**Fig. 9**); and

d) a resilient material connected to said handle and disposed in an operative location to push said simulated weapon blade element to said first position; wherein said simulated weapon blade element, when in a useable position, may move in response to a force on said simulated weapon blade

But fails to explicitly teach:

The simulated blade element being able to move into a plurality of different positions in order to sense force from multiple directions; and

Actuating a single movement sensor when in the multiple positions but not in the first position.

Kim Teaches:

A force sensing system that is able to move into a plurality of different positions in order to sense force from multiple directions (**Fig. 2**); and

Sensors that are activated when the element is in multiple positions and not activated when the element is in a first position (**Fig. 2, leaf springs 36, engaged for a certain portion of the tilted arc of the element**).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have replaced the fixed simulated blade element of Harter with the movably mounted element and corresponding sensors of Kim in order to allow for sensing of force in multiple directions instead of merely sensing inward force.

In Reference to Claims 34 and 50:

Harter as modified above further teaches:

Including said indicating device being a light (**Harter, Fig. 4, 33,34**).

In Reference to Claims 35 and 51:

Harter as modified above further teaches:

Said light being mounted in a cutout in the simulated weapon and providing an indication of force upon the simulated blade element (**Harter, Col. 3, Lines 16-20**).

In Reference to Claims 40 and 57:

Harter as modified above further teaches:

Said blade element further includes a forgiving structure as to evade injury upon contact (**Kim, Fig. 2, spring 54**).

In Reference to Claim 41:

Harter as modified above further teaches:

Said forgiving structure is a resilient material (**Kim, Fig. 2, spring 54**).

In Reference to Claim 42:

Harter as modified above further teaches:

Said element movable to several positions that close circuits and a rest position where all circuits are open (**Kim, Fig. 2, switches 36 and 52 closed when**

element is in various positions and open when element is in a neutral position as shown).

In Reference to Claim 43:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 33 further includes a cam arrangement configured within said housing and in cooperation with said tang comprising at least one wedging surface urging said tang to slide upward in a generally transverse direction across the longitudinal plane of said housing to one of said second positions, activating said movement sensor actuator turning on said indicating device (**Kim, Fig. 2, bottom portion of handle element restrained to movement in directions generally planar to base of housing to engage switches 36**),

whereby said cam arrangement may transform inward movement of said blade element into upward movement thereby permitting the use of one said movement sensor actuator to activate said electrical circuit to alert of an inward force or upward force or combination thereof upon said blade element.

A whereby clause is not given weight when it merely expresses the intended outcome of a step.

In Reference to Claim 44:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 33 wherein said housing further includes a generally elongated shaped cutout generally disposed longitudinally to said housing having a forward end, a rearward end, and a width, the forward end having an opening no wider than the width (**Kim, Fig. 2, opening in diaphragm 26**) and,

said tang comprising a shaped end for movably interconnecting within said elongated shaped cutout thereby allowing for compound movement of said blade element including inward, upward, downward or a combination thereof (**Kim, Fig. 2, bottom of shaft 41 in bushing 27**).

In Reference to Claim 45:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 43 wherein said tang further includes a first end and a second end (**Kim, Fig. 2, top and bottom of portion of shaft 41 in housing**), an elongated slot passing thru said tang generally disposed longitudinally to said element between said first and second end (**Kim, Fig. 2, 47**), a rod extending through said elongated slot is secured to said housing (**Kim, Fig. 2, 50**) thereby providing a moveable pivot point in response to a force on said blade element allowing compound movement of said blade element including inward, upward, downward or a combination thereof (**Kim, Fig. 2, bottom of portion 51 pivoting position based on various forces**).

In Reference to Claim 46:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 45 wherein said elongated slot comprises being disposed on a bias in relation to said blade element longitudinal axis wherein said bias produces said cam arrangement (**Kim, Fig. 2, slot 47 centered in shaft 41**).

In Reference to Claim 47:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 33 wherein said tang further includes being at least partially surrounded by a resilient material residing between said tang and said housing thereby allowing a plurality of movement of said blade element in response to a force on said element including inward, upward, downward or a combination thereof (**Kim, Fig. 2, shaft 41 surrounded by diaphragm 26**).

In Reference to Claim 58:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 48 wherein said blade element further includes being interchangeable with other blade elements containing different structures (**Kim, Col. 1, Lines 50-52**).

In Reference to Claim 59:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 48 wherein said circuit further includes a battery (**Harter, Fig. 4, 31,32**).

In Reference to Claim 60:

Harter as modified above further teaches:

The simulated sharp edged device of Claim 59 wherein said movement sensor actuator further includes said battery and said blade element arranged to contact each other completing said circuit upon movement of said blade element (**Kim, Col. 2, Lines 2-5, electrical contact made**).

5. Claims 36-39 and 52-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,206,697 to Harter (**Harter**) in view of US Patent 4,558,609 to Kim (**Kim**) as applied to claim 1 above, and further in view of US Patent 4,772,028 to Rockhold et al. (**Rockhold**).

In Reference to Claims 36 and 52:

Harter as modified above further teaches:

The invention of previous claims.

But fails to explicitly teach:

Said at least one indicating device is a sound component.

Rockhold teaches:

A simulated combat system wherein indication of simulated impact is provided by sound (**Fig. 1, 33, speaker**).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have added the noise generating circuitry and speaker of Rockhold to the invention of Harter in order to provide an audio indication of impact in addition to the visual indication.

In Reference to Claims 37 and 53:

Harter as modified above further teaches:

Said sound component is a sound chip (**Rockhold, Fig. 4, Microprocessor 41 connected to speakers 33**).

In Reference to Claims 38 and 54:

Harter as modified above further teaches:

The invention of previous claims.

But fails to explicitly teach:

Said indicating device includes a scoring device.

Rockhold further teaches:

wherein said at least one indicating device comprises a scoring device (**Rockhold, Fig. 4, 41**).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have further added the wireless scoring system of the weapons simulation system of Rockhold to the invention as modified above in order to provide an indication of performance beyond a simple indication of simulated impact.

In Reference to Claims 39 and 56:

Harter as modified above further teaches:

> Said indicating device includes a wireless transmitting device mounted in said housing (**Rockhold, Fig. 3, 58**) providing transmission to a wireless receiver in a remote location conveying indication of simulated impact (**Rockhold, Fig. 1, 40**).

In Reference to Claim 55:

Harter as modified above further teaches:

Said scoring device is mounted in said housing in a visible location (**Rockhold, Fig. 1, lights 30**).

Response to Arguments

6. Applicant's arguments filed 09/09/2009 have been fully considered but they are not persuasive.

Applicant's arguments related to the amended claim language have been addressed in the rejection above.

Applicant's argument that "The art of the present invention is not a device that registers force by closing contacts but rather it is an innovative simulated edged weapon and functions as such." is not persuasive. The device being used to simulate an edged weapon is merely a statement of intended use that fails to further limit the structure of the claimed invention, and since the cited combination would be capable of functioning for the stated use, it is interpreted to teach the invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EVAN R. PAGE whose telephone number is (571)270-5049. The examiner can normally be reached on Monday to Friday 7:30 A.M. to 5:00 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERP
12/7/09

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715